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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941.

NO. 991

EDWIN L. WIEGAND COMPANY AND
EDWIN L. WIEGAND,
Petitioners,

VS.

HAROLD E. TRENT COMPANY AND
HAROLD E. TRENT,
Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT

AND BRIEF IN SUPPORT THEREOF

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Edwin L. Wiegand Company and Edwin L. Wiegand, pray that a writ of certiorari issue to the United States Circuit Court of Appeals for the Third Circuit, to review the judgment of that Court entered June 30, 1941.

SUMMARY STATEMENT

The action is a suit by petitioners against respondents, in the District Court of the United States for the Eastern District of Pennsylvania, for patent infringement, copyright infringement, and unfair competition. (R. 1-14.)

This petition is directed only to the cause for infringement of claims 1, 3, 5, 8, 9, and 12, of Letters Patent 1,614,-330, for an electrical heating element, granted to petitioner Edwin L. Wiegand on January 14, 1927. (R. 2-3.) Peti-

tioner Edwin L. Wiegand Company was and is the exclusive licensee. (Exhibit W-17, R. 187, offered at R. 69-70.)

The District Court held the claims infringed if valid, but invalid. (R. 24-29 and 52-53.) The Circuit Court of Appeals held the claims invalid (R. 62-63, omitting the footnotes):

> The invention alleged is for the envelopment and insulation of a wire resistor by a cement-like or porcelain refractory medium. In the earlier heaters, the insulating material is mica. The patent (French) to Luftfahrzeugbau discloses a heating unit "bedded in electrically insulating material." Two patents (British and Swiss) to Muller disclose "a resistance wire wound on a heat-proof insulating plate." The only escape from anticipation must therefore lie in the substitution of the precise material. We are in accord with the learned district judge in his view that the use of such material for analogous purposes was extensive and well-known.

The Circuit Court of Appeals did not pass on the holding of infringement. Petition for rehearing was denied. (R. 68.)

This petition is directed solely to the issue of validity of said claims 1, 3, 5, 8, 9, and 12, of said patent 1,614,330.

JURISDICTION

The jurisdiction of this Court is invoked under Judicial Code, section 240 (a) as amended. (U. S. C., Title 28, section 347 (a) as amended.)

In the matter of this petition, the action is a suit under the patent laws of the United States, under Judicial Code, section 24, sub-section 7. (U. S. C., Title 28, section 41, subsection 7.)

The judgment which petitioners seek to have reviewed, was entered June 30, 1941. Petition for rehearing was denied October 30, 1941. The time within which to file this petition has been extended to and including March 3, 1942.

QUESTIONS PRESENTED

1. Whether claims 1, 3, 5, 8, 9, and 12, of patent 1,614,330, were properly held invalid, particularly for want of invention in view of the Luftfahrzeugbau French patent 517,311, the Muller Swiss patent 83,457, and the Muller British "patent" 140,738. (An application as laid open to inspection, on which patent was not granted, R. 150.)

2. Whether it is proper to construe a patent to be for a different combination and of materially wider scope than defined by the claims, and if so, whether then it is proper to hold the claims invalid for want of invention in the subject matter as construed.

3. Whether it is proper to defeat an invention on inference of disclosure in a foreign patent, particularly when there is no presumption that the foreign patent disclosed anything new or novel whatsoever.

4. Whether it is proper to hold that an improvement did not involve invention, when the deficiencies of the prior devices had long been recognized, and those skilled in the art had long been working to discover a solution, and had not succeeded.

REASONS FOR GRANTING THE WRIT

1. The holding of invalidity is in conflict with the prevailing recognition of the invention and the judgment of a court of another circuit.

2. The holding of invalidity is predicated on an interpretation of the invention in conflict with applicable decisions of this Court.

3. The holding of invalidity is predicated on assumptions of disclosure by the three foreign patents in conflict with applicable decisions of this Court.

4. The holding of invalidity is in conflict with applicable decisions of this Court that an improvement that was not obvious to those skilled in the art is invention.

5. Because of the general recognition of the patent, any basis for another suit is not likely to occur.

PRAYER

Petitioners pray that a writ of certiorari issue to the United States Circuit Court of Appeals for the Third Circuit, to the end that this cause may be reviewed and determined by this Court, and that the judgment of said Circuit Court of Appeals be reversed, and that petitioners be granted such other and further relief as may be proper.

HADLEY F. FREEMAN,
Counsel for Petitioners.